

## Nuclear Regulatory Commission

## § 12.103

are as follows: §§11.1, 11.3, 11.5, 11.7, 11.8, 11.9, 11.16, 11.21, 11.30, and 11.32.

[57 FR 55070, Nov. 24, 1992]

### PART 12—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

#### Subpart A—General Provisions

Sec.

- 12.101 Purpose.
- 12.102 When the EAJA applies.
- 12.103 Proceedings covered.
- 12.104 Eligibility of applicants.
- 12.105 Standards for awards.
- 12.106 Allowable fees and expenses.
- 12.107 Rulemaking on maximum rates for attorney fees.
- 12.108 Awards against other agencies.
- 12.109 Decisionmaking authority.

#### Subpart B—Information Required From Applicants

- 12.201 Contents of application.
- 12.202 Net worth exhibit.
- 12.203 Documentation of fees and expenses.
- 12.204 When an application may be filed.

#### Subpart C—Procedures for Considering Applications

- 12.301 Filing and service of documents.
- 12.302 Answer to application.
- 12.303 Reply.
- 12.304 Comments by other parties.
- 12.305 Settlement.
- 12.306 Further proceedings.
- 12.307 Decision.
- 12.308 Agency review.
- 12.309 Judicial review.
- 12.310 Payment of award.

AUTHORITY: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)); Pub. L. 99-80, 99 Stat. 183.

SOURCE: 59 FR 23121, May 5, 1994, unless otherwise noted.

#### Subpart A—General Provisions

##### § 12.101 Purpose.

The purpose of this part is to state the regulatory requirements for award of attorney fees to eligible individuals and entities in certain administrative proceedings before the Nuclear Regulatory Commission, in implementation of the Equal Access to Justice Act, 5 U.S.C. 504 (EAJA), which provides for the award of attorney fees and other expenses to parties to “adversary adju-

dications”, as defined in 5 U.S.C. 504(b)(1)(C). In general, an “adversary adjudication” is an adjudication that is required by statute to be determined on the record after opportunity for hearing before an agency of the United States and in which the position of the agency, or any component of the agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. However, some agency adjudications are expressly excluded from coverage by 5 U.S.C. 504 (e.g., an adjudication for the purpose of granting or renewing a license) even though they fall within this general definition, and certain appeals before an agency board of contract appeals and Program Fraud Civil Remedies Act hearings conducted under 31 U.S.C. ch. 38 are expressly covered.

An eligible party may receive an award in an adversary adjudication when the party prevails over the Commission, unless the Commission’s position was substantially justified or special circumstances make an award unjust. The regulations in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

##### § 12.102 When the EAJA applies.

The EAJA applies to any covered adversary adjudication pending or commenced before the Commission on or after August 5, 1985.

##### § 12.103 Proceedings covered.

(a) The EAJA applies to the following proceedings:

(1) Hearings under the Program Fraud Civil Remedies Act (31 U.S.C. 3801-12);

(2) Any appeal of a decision made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before an agency board of contract appeals as provided in section 8 of that Act (41 U.S.C. 607); and

(3) Adversary adjudications conducted by the Commission pursuant to any other statutory provision that requires a proceeding before the Nuclear